VIA ELECTRONIC FILING

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Washington, District of Columbia 20554

RE: Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992, Third Report and Order- MB Docket No. 05-311

Dear Ms. Dortch,

I am the director of Norton Media Center in Norton, Massachusetts. I have been in this role for the past 17 years, so I have been in a position to be a part of the negotiation processes between our ISP (Comcast) and the municipality. This year we signed a new 10 year agreement with Comcast.

At no time have we seen any competitors make any attempt to sell similar services to the residents of this municipality. We have made several formal and informal requests to Verizon to attempt to request that they build out FIOS into our area, but we have been told that there is no current business interest on their part.

We have also completed our most recent ascertainment process with the ISP well within the temporal framework set by regulatory guidelines. Many years back we used our franchise fee from the ISP to construct our own fiber optic I-net with no further financial assistance from the ISP to assist with its on-going maintenance. Comcast got out of their I-nets with the majority of municipalities in MA in similar fashion many years ago, so this no longer represents a financial burden to them.

Further we receive no portion of the revenue generated by the ISP's via high speed internet, even though our subscribers are receiving our video content through their home computers and smart connected televisions over the same cable.

I recently met with fellow cable access directors at Sen Markey's office where we learned that our ISP may place a valuation of nearly 6 million dollars on the value of a single PEG channel and count that as an "in-kind" contribution against our 5% negotiated fee. This is a grossly inaccurate valuation. If we examine the annual revenue based on the subscribership in our municipality, the ISP makes 5-6 million dollars annually for all 100+ channels cumulatively that they offer the their cable television subscribers. By their math we have been "given" 18 million dollars worth of PEG channels (3x6millon/ channel) But from where is this figure derived? A channel is only worth its marketable potential. As a non-profit we are not allowed to use our channels for commercial revenue generation. Therefore the market-derived value of our channels is zero. Not 6 million per channel as the ISP may assert if this proposed ruling passes.

By way of another example, we currently lease our studio space from a landlord. Like all business leases we have to pay CAM fees. This is an acronym for Common Area Maintenance charges. These are the pooled costs shared by all tenants in the building. They include a percentage of taxes, common area maintenance in hallways, elevator servicing, and landscaping. Often these CAM fees can be as much as a whole month of rent. The landlord gets to decide what elevator company to use and how often to service it. He gets to hire the landscapers and decide how often to do the landscaping. We have no control over whether he spends a little on these services or too much. If the landscaper is way overpriced and does a terrible job we have no contractual way of not paying our portion of that CAM bill.

This is the situation this new proposed rule making places us in. No matter what we have already negotiated in good faith with the ISP, this ruling gives the ISP an unfair advantage by allowing them to decide how much a channel is worth (to use my most recent example) and use that arbitrary and unfair valuation against what we are owed for our granting of right of way to our utility poles in the municipality.

This proposed ruling would additionally preempt and prohibit the municipality from reciprocating and deciding what to charge the ISP for our rights of way. So on the one hand the ISP has the right to charge whatever they wish and count it as an in-kind contribution, but the municipality cannot. This is not a level playing field under any circumstance.

What is the industry justification for such a move?

The rationale behind this proposed rule-making is that the municipal negotiations between prospective ISP's and the towns where they seek to do business are inefficient processes that somehow act as barriers to entry on the part of emerging competitors into this space. This has not been our experience. Our negotiations and those of my peers in other area municipalities have been very quick and efficient and have not been dragged out in lengthy court battles.

We have even gone so far as to invite other competitors such as Verizon to the negotiating table and they have refused due to the lack of population density in our municipality. We have been red-lined by them in favor of higher density cities where the total subscribership can justify the high cost of capitalization and build-out of fiber to the last mile consumer.

For the FCC or any ISP to assert that a reduction in a fee paid to the municipalities in exchange for their rights of way (a fee that amounts to 5% or less in some towns) is necessary to promote a climate of greater choice for consumers and encourage innovation is turning a blind eye to blatant industry rent seeking through this proposed rule change.

What I see is a win/win for the ISPs where the current players can get a windfall by using the new proposed FCC rule making to conveniently re-define revenue structuring outside of the boundaries of legally negotiated contracts between the municipalities and the ISPs. That is a win for them and a loss to the towns who rely on that tiny fractional percentage of revenue to operate their own I-nets. These I-nets provide residents with valuable local insights into their government and community via locally-originated content that would otherwise have no commercial value in the marketplace.

The other telcos who wish to have access to our rights of way but do not wish to pay for it through fairly negotiated contracts will also win. They have been sitting out this market because of subscriber density issues and their accordingly impossible ROI's until now. Current wireless technology has matured to the point where they can now hang line of sight millimeter wave antennas on every pole and reach every customer at a much smaller capitalization outlay. Now they can use a new rule making to effectively cut the municipalities off at the knees and force acceptance of their equipment on the poles without fair consideration to the municipalities. Both industry players can mutually use the cover story that "burdensome" negotiations and a 5% franchise fee are bottlenecks to progress when they never ever were.

Who loses if this passes? The people. They have to pay taxes to live in their homes. The industry ISPs want the access but not to pay their fair share to receive right-of-way to our poles. The outcome of such a proposed rule making will be a loss of an enshrined institutional communications infrastructure (I-net) that facilitates transparency of local government and functions as an invaluable platform for all other non-commercially viable forms of speech.

There is a cost of doing business for every enterprise. When these costs are transparent and markets are permitted to fairly negotiate for consideration in legally binding contracts, we bring sunshine to the

process through public ascertainment hearings. This process was designed from its inception to allow consumers a chance to decide the players and the outcomes and to negotiate a mutual benefit.

If the 05-311 rule changes pass, history will bear witness to an overreach of the authority delegated to the FCC. It will make void legally negotiated contracts between the ISP's and the municipalities and do so in a manner that unfairly favors the industry to the detriment of the autonomy of the municipalities and their constituents.

In no way does this proposed rule-making functionally improve the competitive landscape for consumer choice. When industry rent seeking becomes the priority we lose more than money. We lose informed consent both as consumers and citizens.

As the steward of our public communications system we urge you to do the right thing and strike down this proposed rule-making change.

Best,

Jason Benjamin

Executive Director
Norton Media Center
Norton, MA 02766